

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
June 27, 2023 Session

**FILED**  
09/29/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. TIMOTHY EUGENE WELLS**

**Appeal from the Criminal Court for Monroe County  
No. 19299                      Andrew M. Freiburg, Judge**

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**No. E2022-00961-CCA-R3-CD**

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In 2021, the Defendant, Timothy Eugene Wells, pleaded guilty to sexual assault by an authority figure, as a Range II offender, in exchange for a sentence of six to ten years with the manner of service to be determined by the trial court. After a sentencing hearing, the trial court imposed an effective sentence of eight years of incarceration. On appeal, the Defendant asserts that the trial court abused its discretion when it ordered him to serve his sentence in confinement. After review, we affirm the trial court’s judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Kendall Stivers Jones, Assistant Public Defender – Appellate Division, Franklin, Tennessee (on appeal); and William L. Gribble, II (at trial), Maryville, Tennessee; for the appellant, Timothy Eugene Wells.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Wheldon, Assistant Attorney General; Stephen D. Crump, District Attorney General; and Matthew L. Dunn, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION  
I. Facts**

In 2019, a Monroe County Grand Jury indicted the Defendant for the continuous sexual abuse of a child. The Defendant pleaded guilty to sexual assault by an authority figure in exchange for a sentence of six to ten years, as a Range II offender, with the manner of service to be determined by the trial court.

The following facts, as summarized in the presentence report, served as the underlying basis for the plea:

On March 20, 2019, C.W. went into the detective's office and reported that she had been told by her 18YO daughter A.R., that her husband, [the Defendant], had been molesting her for the past 8 years. She also informed me that he had molested her 16YO daughter A. for the same period of time. A previous DCS case had already taken place in reference to [the Defendant] molesting A.R. in 2018 but was unsubstantiated due to lack of evidence. Upon speaking with A.R., we were told that [the Defendant] had touched her private areas and performed oral sex on her on several different occasions throughout the 8 year time frame. He also attempted to penetrate her with his penis but was unable to. A.R. had already submitted to a forensic interview during the previous DCS investigation in which she did disclose that [the Defendant] did touch her in her private areas over the same time frame.

The Defendant made the following statement in the presentence report:

I touched my stepdaughter in an inappropriate way that was not right for anyone to do especially me as her stepfather. I don't know why I did it is not in my nature to do this and it was not right for me or anyone else especially as an authority figure or no one else for that matter. I am currently seeking help for my actions to find out why I did this to a stepchild that did not deserve for this to happen. I pray to God every day for forgiveness for what I have done and hope she also can forgive me for what I have done.

At the sentencing hearing, the State presented the following evidence: A.R., the victim, testified that the Defendant was her stepfather and had been in her life since she was in kindergarten. She stated that he committed multiple acts of sexual abuse towards her throughout her childhood, beginning in September of 2011 when she was ten years old. It began at a frequency of two times per month and then, beginning in April of 2012, it began happening "every Saturday morning" until March of 2018. A.R. recalled that her mother worked on Saturday morning, and she was home alone with the Defendant and her younger siblings. A.R. testified that she got a job on Saturday mornings so she would not have to be home alone with the Defendant.

A.R. recalled that, initially, the abuse occurred while her family and the Defendant lived in North Carolina. They moved to Tennessee in the spring of 2012 when A.R. was in the seventh grade. She testified that she would be asleep in her bed and the Defendant would get into her bed with her. The Defendant would touch her vaginal area with his

finger or his penis. He also would force her to perform oral sex on him or he would perform oral sex on her. The Defendant would tell her she was beautiful and that he loved her. A.R. said this occurred every week for long stretches of time, but that it would cease for a month or so every so often. A.R. stated that the abuse had continued for seven or eight years so it was difficult to remember exactly how often it occurred. A.R. testified that she later learned the same thing was happening to her younger sister.

A.R. stated that, as a result of the abuse, she felt insecure and suffered from post-traumatic stress related to the abuse. She stated that, while the Defendant was complimenting her privately, he was demeaning toward her in public and constantly breaking her down in front of others. She stated he made their home an uncomfortable place to live for their whole family.

D.R., A.R.'s brother, testified that the Defendant was also his stepfather. D.R. recalled that during the time the abuse was occurring, the Defendant instructed him to go outside on Saturday mornings, and D.R. would not be allowed back in the house. A.R.'s younger sister testified that the Defendant sexually abused her every Saturday morning when her mother was at work. She stated that it began around the time she was ten years old and that he would rub his penis on her.

Dr. James Michael Adler testified on behalf of the Defendant and stated that he had, as a member of the Tennessee Department of Correction's Sex Offender Treatment Board, performed a psychosexual analysis of the Defendant. Dr. Adler found that the Defendant's account of his crimes was "questionable." Dr. Adler determined the Defendant to be a "low-moderate risk" for reoffending or continuing deviant sexual activity based on the absence of other such activity from his history. On this basis, Dr. Adler recommended that the trial court place the Defendant in an outpatient sexual offender treatment program.

Character witnesses testified that the Defendant was remorseful and willing to do the things necessary to be on probation.

At the conclusion of the hearing, the trial court issued an order stating that, as part of his negotiated plea agreement, the Defendant agreed to plead guilty as a Range II offender. The trial court applied enhancement factor (1), that the defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range, based on the Defendant's repeated instances of sexually abusing the victim and the victim's sister over the course of six years. T.C.A. § 40-35-114(1). The trial court accredited the testimony of the victim and her sister. The trial court applied enhancement factor (6), that the personal injuries inflicted upon the victim were particularly great, based on the personal and psychological injuries inflicted on the victim, which the trial court found to be particularly great and long-lasting. T.C.A. § 40-35-114(6).

The trial court stated that it was considering the principles of sentencing in light of the victim's testimony and impact statement in which she detailed the negative effects of the sexual abuse. As a mitigating factor, the trial court applied the factor that the Defendant had not been convicted of a previous crime. T.C.A. § 40-35-113(13). The trial court went on to state:

This Court finds [the] Defendant to have been less than truthful about the extent of the molestation of the victim and [the victim's sister]. [The] Defendant continues to engage in psychological minimizing, limiting his culpability to "save face" with his family and friends and limit his incarceration exposure for his criminal conduct. It is illogical to believe that the sisters are fabricating evidence of additional criminal conduct beyond the conviction offense at bar given the corroborating evidence, not least of which being [the] Defendant's guilty plea and sentencing hearing admissions. The sisters hold no tangible motive or incentive to fabricate corroborated truth. [The] Defendant, meanwhile, has a substantial motive to testify in a manner to bolster his pursuit of probation and to minimize exposure for the possibility of additional prosecutions.

....

[The] Defendant did not merely sexually assault a young woman, but rather stole from her innocence, peace, dignity and the ability to have the life for which she was destined before victimization by [the] Defendant. [The] Defendant became the victim's step[ ]father when she was five years old. [The] Defendant was the father figure in her life. It is clear to this Court that the victim is a ghost of her former self as a result of this molestation. While she survived the sexual abuse, she emerged a different person, one not nearly as comfortable around others and one not as confident in herself or her future. This young lady continues to recover her trust in others and continues to rehabilitate her self-concept and image. The victim in this case sustained mental scars as a result of [the] Defendant's criminal actions. This Court puts great weight on this enhancement factor as it applies to this conviction offense.

Not every sexual battery by an authority figure case involves such betrayal of spirit. The Court finds that [the] Defendant groomed his step[ ]daughter for sexual abuse, and exploited every available opportunity to molest her body over a number of years. As stated herein, this Court also finds by a preponderance of the evidence that he sexually abused his other step[ ]daughter, [ ]. [The] Defendant also caused the victim lingering

psychological impairments. This is truly an aggravated crime. [The] Defendant's actions are appropriately described as horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree.

....

[T]his Court finds [the] Defendant has been less than truthful in confessing his criminal conduct. This Court finds that [the] Defendant began molesting [A.R.] in this case when she was ten (10) years old. This Court finds that [the] Defendant engaged in near weekly sexual assaults of the victim in this case over a period spanning numerous years. This Court finds that [the] Defendant did not merely just fondle his step[ ]daughter [A.R.] in this case, but elevated conduct to include cunnilingus and fellatio. This Court finds by a preponderance of evidence that [the] Defendant sexually abused a second step[ ]daughter, . . . for a prolonged period of time. Given these findings, . . . , this Court concludes that [the] Defendant's risk of re-offense level is substantially high[ ]. It does appear that [the] Defendant is willing to voluntarily participate in weekly therapy sessions and be examined and polygraphed twice a year . . . . However, the aggravated facts of this case and evidence of [the] Defendant's other criminal conduct are so aggravated as to make alternative sentencing inappropriate. . . .

It appears to the Court that [the] Defendant benefited greatly from his role as step[ ]father in accomplishing this crime and the other criminal conduct against his step[ ]daughters, which this Court has found to have occurred over a number of years by a preponderance of the evidence. [The] Defendant used his position to exploit times when the victim and her sister were alone on Saturday mornings. [The] Defendant then used this proximity and authority to manipulate them for his criminal purpose. . . . While only convicted of a single count at bar, this case does not present as one in which the offender engaged in impulsive conduct. This finding weighs substantially against alternative sentencing. [The] Defendant cannot now claim himself a good husband, father or friend. This Court finds that no other mitigation applies in this case.

In weighing both the applicable enhancement and mitigati[ng] factors in this matter, in light of the facts and circumstances discussed herein, this Court remains mindful of the law guiding the imposition of any sentence. *See* Tenn. Code Ann. § 40-35-210. It is the "minimum sentence within the range of punishment [which] is the sentence that should be imposed, because the general assembly set the minimum length for each felony class to reflect

the relative seriousness of each criminal offense in the felony classification. At bar, there exists, by a significant measure, more enhancement than mitigation for this conviction offense. This Court weighs most heavily, to the detriment of [the] Defendant, the serious and grievous psychological injuries he inflicted upon the victim and the magnitude of his other uncharged and un-convicted criminal conduct against both of his step[]daughters over a number of years.

As such, this Court enhances [the] Defendant's sentence to the midpoint within the applicable range of punishment for his conviction offense. As stated herein, incarceration must also apply in this matter according to the dictates of justice, but does not inflate the overall effective sentence beyond that which is necessary and deserved for the crime committed. As such, [the] Defendant shall receive an eight (8) year sentence to serve in the Tennessee Department of Correction, such sentence being consistent with the purposes and principles of our Sentencing Act.

It is from this judgment that the Defendant now appeals.

## II. Analysis

On appeal, the Defendant argues that the trial court abused its discretion when it denied his request for an alternative sentence because the evidence established that he was a low risk for reoffending and a good candidate for treatment. He also contends that the trial court failed to make the required finding that incarceration would serve as a deterrent for others likely to commit a similar offense. Finally, he argues that the evidence does not support a finding that incarceration was necessary to avoid depreciating the seriousness of the offense. The State responds that the Defendant's sentence was not an abuse of the trial court's discretion and that there was substantial evidence of the need to confine the Defendant. We agree with the State.

“[T]he abuse of discretion standard, accompanied by a presumption of reasonableness, applies to within-range sentences that reflect a decision based upon the purposes and principles of sentencing, including the questions related to probation or any other alternative sentence.” *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). A defendant bears “the burden of showing that the sentence is improper.” *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). A trial court's decision regarding probation will only be invalidated if the court “wholly departed from the relevant statutory considerations in reaching its determination.” *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014). Under an abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.* at 475.

With regard to alternative sentencing, Tennessee Code Annotated section 40-35-102(5) provides as follows:

In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration.

A defendant shall be eligible for probation, subject to certain exceptions, if the sentence imposed on the defendant is ten years or less. T.C.A. § 40-35-303(a) (2018). A defendant is not, however, automatically entitled to probation as a matter of law. The burden is upon the defendant to show that he or she is a suitable candidate for probation. T.C.A. § 40-35-303(b) (2018); *State v. Goode*, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997); *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). In order to meet this burden, the defendant “must demonstrate that probation will ‘subserve the ends of justice and the best interest of both the public and the defendant.’” *State v. Bingham*, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995) (quoting *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)).

There is no bright line rule for determining when a defendant should be granted probation. *Bingham*, 910 S.W.2d at 456. Every sentencing decision necessarily requires a case-by-case analysis considering “the nature of the offense and the totality of the circumstances . . . including a defendant’s background.” *Ashby*, 823 S.W.2d at 168 (quoting *State v. Moss*, 727 S.W.2d 229, 235 (Tenn. 1986)). In determining if incarceration is appropriate in a given case, a trial court should consider whether:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103(1) (2018). “When considering probation, the trial court should consider the nature and circumstances of the offense, the defendant’s criminal record, the defendant’s background and social history, the defendant’s present condition, including

physical and mental condition, the deterrent effect on the defendant, and the best interests of the defendant and the public.” *State v. Brian Allen Cathey*, No. E2015-01284-CCA-R3-CD, 2016 WL 2641766, at \*3 (Tenn. Crim. App., at Knoxville, May 6, 2016) (citations omitted). The court should also consider the defendant’s truthfulness. *State v. Bunch*, 646 S.W.2d 158, 160 (Tenn. 1983). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of a defendant in determining the sentence alternative or length of a term to be imposed. T.C.A. § 40-35-103.

In this case, the trial court denied the Defendant’s request for an alternative sentence based on multiple factors, including the Defendant’s extensive and lengthy sexual abuse of the victim and her younger sister, and his minimizing his behavior, both of which the trial court weighed heavily against an alternative sentence. The trial court considered several factors, including the Defendant’s social support system, which the trial court weighed in favor of the Defendant’s request for an alternative sentence. The record establishes that the Defendant was the adult in charge of the victim every Saturday morning for a number of years in the household he shared with the victim and her younger sister. During the time period he was alone with them, the Defendant engaged in repeated and extensive sexual abuse of the victim and her sister. The victim testified to the extensive negative consequences of the abuse. The trial court also noted the extensive nature of this abuse and the fact that there existed criminal conduct by the Defendant against both of his stepdaughters for which he had not been indicted. Based on the evidence, we conclude that the Defendant has not established that the trial court abused its discretion by denying him an alternative sentence. The Defendant is not entitled to relief.

### **III. Conclusion**

Based on the foregoing reasoning and authorities, we affirm the trial court’s judgment.

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ROBERT W. WEDEMEYER, JUDGE